

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL CASE NO. 318 OF 2023

*(Arising from the Judgment/Ruling of District Land and Housing Tribunal for Kinondoni
in Misc. Land Application No. 240/2023 dated 18/07/2023)*

FABIAN JOACHIM KWAY under power of Attorney of

JACKSON LUTENYA MLASA).....APPELLANT

VERSUS

RAPHAEL RENGESA NOMBO.....RESPONDENT

RULING

20/11/2023

L. HEMED, J.

On 2nd day of October, 2023, Land Appeal No. 318 of 2023 was called for hearing. On the said date, the Appellant submitted to be unwell and thus sought for adjournment. **Mr. Mombek Kabyemela**, learned advocate who appeared to represent the respondent did not object the prayer for adjournment, but he also proposed the appeal to be argued by way of written submissions, the suggestion which was supported by the appellant.

Following such consensus, the court ordered the matter to be argued by way of written submissions. The Appellant was to file his submissions in



chief by 16th October, 2023. Reply submissions was to be lodged by 30th October, 2023 while rejoinder if any would have been filed on or before 6th November, 2023. The duty of the court was to compose judgment and deliver it on 20th November, 2023. However up to 20th November, 2023 the appellant had not filed his submissions in chief.

On 20th November 2023, when the appellant was required to show cause why the court should not dismiss the appeal for want of prosecution, he asserted that he could not file his submissions because he had no access to the records of the trial Tribunal. He prayed for extension of time.

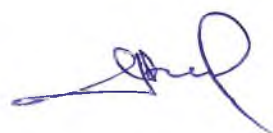
In response thereto, Mr. Nicolous Mgalula submitted to the effect the appellant has failed to prosecute his appeal by failure to file written submission as he was ordered by the Court. He fortified his arguments by citing the Court of Appeal's decision in **Godfrey Kimbe vs Peter Ngonyani**, Civil Appeal No. 41 of 2014 where the court held that failure to file written submissions is as good as failure to appear on the day fixed for hearing. He asserted that since the Appellant has never applied for extension of time, the court should dismiss the appeal.

In rejoinder submission, the appellant reiterated his submission in chief and prayed for extension of time.



Having heard from the parties, it is apt for the court to deliberate on the matter. On 2nd of October 2023, the parties and the court were assigned responsibilities for disposal of the instant Appeal. The Appellant had the duty to file his submission in chief and rejoinder by 16th October 2023 and by 6th November, 2023, respectively. The respondent's responsibility was to file reply submissions by 30th October 2023. While the court was obliged to compose judgment and deliver it on the 20th November, 2023. The court could not be able to discharge its obligation because there was no submissions being filed by the parties.

The appellant's cause of failure to file his written submissions is that he did not access the records of the trial Tribunal to enable him prepare his submission to prosecute the appeal. The reason given by the appellant for failure to file his submissions is perplexing one. I am holding so because there is no way the appellant would have prepared his Appeal without having the copies of Judgment/Ruling and the proceedings. Grounds of appeal are drawn from the decision of the court/ Tribunal and/or the proceedings of the matter. It is believed and indeed a fact that, when the appellant herein decided to lodge the instantaneous Appeal, he had examined the



proceedings and the decision of the trial Tribunal a found a ground which is the basis of this appeal.

It is my firm opinion that the reason for failure to access the proceedings of the trial Tribunal cannot be a good ground or sufficient cause for failure to file written submissions because the appellant ought to have accessed the said records of the trial Tribunal prior to lodging of the appeal.

Additionally, in the present case, the Appellant never applied for extension of time to file his submissions. He did not even notify the court that he was unable to file submission. He kept quiet until on the date fixed for judgment when he emerged praying for extension of time and after the court having called him to show cause why the Appeal should not be dismissed. I am not convinced by the averments of the Appellant. The appellant is considered to have intentionally failed to file submissions to prosecute his Appeal. The question is what is the effect of not filing submissions on the part of the appellant?



In **Patson Matonya vs The Registrar Industrial Court of Tanzania and Another**, Civil Application No. 90 of 2011, the Court of Appeal of Tanzania held that failure by a party to lodge written submissions



after the court has ordered a hearing by written submissions is tantamount to being absent without notice on the date of hearing.

In the instant Appeal, the Appellant did not file submissions on due date as it was ordered. In fact, this court cannot be made impotent by a party's inaction to prosecute his appeal. It has to act accordingly. Being a trite law that failure to file submission(s) is tantamount to failure to prosecute one's case, I do hereby dismiss the entire appeal for want of prosecution. Each party to bear its own costs. It is so ordered.

DATED at **DAR ES SALAAM** this 20th November, 2023.

L. HEMED
JUDGE

COURT: Ruling delivered in the presence of Mr. Nicolous Mgalula, advocate of the Respondent and the Appellant appearing in person this 20th November 2023. Right of appeal explained.




L. HEMED
JUDGE